



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 2, 1998

Ms. Jennifer S. Riggs
Riggs & Associates
Attorneys at Law
602 Harthan Street, Suite A
Austin, Texas 78703

OR98-2922

Dear Ms. Riggs:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your requests were assigned ID# 119818 and ID# 120267.

The Housing Authority of the City of Edna (the "housing authority") received three related requests for information. The first request is for copies of:

All billing invoices from Riggs and Associates pertaining to any and all legal and professional services rendered to the Housing Authority of the City of Edna in regards to Cause No. 98-1-10941 . . . indicating the date and amount of charges for each invoice. I do not request any information which may be regarded attorney/client information such as what service(s) were performed.

You indicate that you have released edited fee bills without the narrative description of services rendered to the requestor. Although the requestor explicitly excludes "what services(s) were performed" from his request, you have submitted unedited fee bills to this office for review. You contend that the narrative description of services rendered is excepted from disclosure pursuant to sections 552.101, 552.103, and 552.107 of the Government Code.¹ In a letter directed to this office, the requestor asks whether he will be able to obtain the narrative portions of the fee bills. Therefore, we will consider your arguments against disclosure of the narrative portions of the fee bills.

¹Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. You raise sections 552.101 and 552.107 in conjunction with the attorney client and attorney work product privileges. The attorney client privilege is properly raised under section 552.107, and the attorney work product privilege is properly raised under sections 552.103 and 552.111. Open Records Decision Nos. 647 (1996), 574 (1990). Therefore, we will address your arguments under sections 552.103, 552.107, and 552.111, but we will not address your section 552.101 claim.

The second request is for copies of the following documents:

- (1) Canvass of tenants for the "tenant association" compiled by Commissioners Roseann Jones and Rachel Sanchez (3-20-97 meeting)
- (2) Survey of like-sized housing authorities taken by you using Edna Housing Authority letterhead and envelopes (8-21-97 meeting)
- (3) Copies of all information sent to the Attorney General's Office of the State of Texas and the Department of Housing and Urban Development which was approved by the Housing Authority of the City of Edna, Texas Commissioners on the agenda on October 9, 1998 (Item #6 and November 5, 1997 (Item #4).

You state that you will provide the requestor with information responsive to item 1 of this request to the extent that such information is in the housing authority's possession. We note that you must also provide the requestor with responsive information to which the housing authority has a right of access. *See* Gov't Code § 552.002(a)(2). You argue that the information responsive to item 2 of the request is not subject to disclosure under the Open Records Act. In the alternative, you contend that this information is excepted from disclosure pursuant to section 552.103 of the Government Code. You also invoke section 552.103 for the information responsive to item 3 of the request.² Despite our request for copies of the documents at issue in the second request, you did not provide us with copies of those documents.

The third request is for copies of the following documents:

- (1) Texas Municipal League (TML) correspondence regarding Cause No. 98-1-10941 (Ms. Hinojosa's Open Meetings Act lawsuit);
- (2) Blank TML forms for Errors & Omissions insurance coverage;
- (3) A cumulative total for legal services rendered and expenses billed for Riggs & Associates, P.C., for certain specified matters, which include Cause No. 98-1-10941 and Hinojosas' Open Records Act requests.

²We state that we previously ruled that the narrative portions of the fee bills and the information responsive to item 3 of the second request were excepted from disclosure under section 552.103. Open Records Letter No. 98-0441 (1998). Because circumstances have changed since we issued ORL 98-0441, you now ask whether this information continues to be excepted from disclosure under section 552.103.

You contend that the TML correspondence responsive to item (1) of the third request is excepted from disclosure under section 552.103 of the Government Code and pursuant to the attorney client and attorney work product privileges. You have submitted a representative sample of the TML correspondence to this office for review.³ You state that the housing authority has no objection to releasing the information responsive to item (2) of this request. As for item (3), you state "that there are no documents that provide a cumulative total of legal services rendered on particular matters." We note that although the housing authority is not required to create new documents in response to an open records request, the housing authority should advise the requestor of the types of information available so that the requestor may narrow or clarify item (3) of the request. Open Records Decision Nos. 563 (1990), 561 (1990), 534 (1989).

We begin by addressing your claim that the "[s]urvey of like-sized housing authorities" conducted by Ms. Ruth Griffin, Chair of the Board of Commissioner of the housing authority, is not "public information" subject to disclosure under the Open Records Act. Section 552.002 of the Government Code defines public information as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Having considered all of the information presented by both you and the requestor, we conclude that the survey is information collected and maintained by the housing authority in connection with the transaction of its official business. Thus, the survey is subject to release under the Open Records Act.

We now consider the effect of your failure to submit the copies of the survey and other documents at issue under the second request to this office. Pursuant to section 552.301(b) of the Government Code, a governmental body is required to submit to this office (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, and (3) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office a copy of the written request for information or copies or representative samples of the specific information requested.

Pursuant to section 552.303(c) of the Government Code, this office notified you by facsimile on October 13, 1998, that you had failed to submit the information required by section 552.301(b). We requested that you provide this information to our office within

³We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

seven days from the date of receiving the notice. The notice further stated that failure to comply would result in the legal presumption that the information at issue is public and must be disclosed. *See* Gov't Code § 552.303(e).

You did not provide our office with the information that was requested. Therefore, as provided by section 552.303(e), the documents that are the subject of the second request for information are presumed to be public information. In the absence of a demonstration that these documents are confidential by law or that other compelling reasons exist as to why they should not be made public, you must release them to the requestor. Open Records Decision No. 195 (1978).

Next, we consider whether the narrative portions of the submitted fee bills and the submitted TML letters are excepted from disclosure under the exceptions to disclosure you have claimed. You contend that the narrative portions of the submitted fee bills are excepted from disclosure as attorney work product. A governmental body may withhold attorney work product from disclosure under section 552.111 of the Government Code if it demonstrates that the material was 1) created for trial or in anticipation of civil litigation, and 2) consists of or tends to reveal an attorney's mental processes, conclusions and legal theories. Open Records Decision No. 647 (1996). The first prong of the work product test, which requires a governmental body to show that the information at issue was created in anticipation of litigation, has two parts. A governmental body must demonstrate that 1) a reasonable person would have concluded from the totality of the circumstances surrounding the investigation that there was a substantial chance that litigation would ensue, and 2) the party resisting discovery believed in good faith that there was a substantial chance that litigation would ensue and conducted the investigation for the purpose of preparing for such litigation. ORD 647 at 4. The second prong of the work product test requires the governmental body to show that the documents at issue tend to reveal the attorney's mental processes, conclusions and legal theories.

The narrative portions of the submitted fee bills relate to a lawsuit involving an alleged violation of the Open Meetings Act. We are satisfied that the portions of the fee bills which you have marked were 1) created for trial or in anticipation of the Open Meetings Act lawsuit and 2) consists of or tends to reveal an attorney's mental processes, conclusions and legal theories. Therefore, the housing authority may withhold the narrative portions of the fee bills from disclosure under section 552.111 as attorney work product.

Finally, you contend that the TML letters are excepted from disclosure under section 552.107 of the Government Code. Section 552.107(1) excepts information from disclosure if:

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

In Open Records Decision No. 574 (1990), this office concluded that section 552.107(1) excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. ORD 574 at 5. Section 552.107(1) does not protect purely factual information. *Id.* For example, section 552.107(1) does not except from disclosure the factual recounting of events or the documentation of calls made, meetings attended, and memos sent. *Id.* Having reviewed the TML letters, we find that they are excepted from disclosure under section 552.107(1).

To summarize, the survey is subject to disclosure under the Open Records Act, because it is information collected and maintained by the housing authority in connection with the transaction of its official business. The survey and other documents at issue under the second request are presumed public because you failed to submit them to this office for review. You should release these documents to the requestor. The narrative portions of the fee bills are excepted from disclosure under section 552.111 as attorney work product. The TML letters are excepted from disclosure under section 552.107.

Because we are able to resolve this matter under sections 552.107 and 552.111, we do not address your section 552.103 claim at this time. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Karen Hattaway". The signature is written in a cursive, flowing style.

Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/mjc

Ref: ID# 119818

Enclosures: Submitted documents

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